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1855 TREATY AUTHORITY

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February 18, 2018

SENT VIA EMAIL ONLY TO:
richard.gitar@fdlrez.com

Richard Gitar
 Office of Water Protection
 Fond du Lac Reservation
 1720 Big Lake Road
 Cloquet, MN 55720

Re: Line 3 project – FDL consents

Dear Mr. Gitar,

I am writing in regards to the protection of Chippewa wetlands and other lands and water resources, including water quality on the reservation, in regards to Enbridge's Line 3R permit application and the required 401 Water Quality Certification. These comments are directed at legal requirements of consent from MCT Bands.

When the *Chippewas of Mississippi* signed the 1854 Treaty with the U.S., it was as co-owner of the land and water resources, *held in common* with the Lake Superior Chippewa bands per the 1842 Treaty. While the *Chippewas of the Mississippi* relinquished all payment for the 1854 lands ceded, including the lands and waters retained within the permanent 1854 Chippewa reservations like FDL, usufructuary rights were not relinquished.

This concept of commonly held resource division is also included in Article 8 of the 1854 Treaty, whereby "It is agreed, between the Chippewas of Lake

TREATY WITH THE CHIPPEWA, 1855.

Feb. 22, 1855. | 10 Stat., 1165. | Ratified March 3, 1855. | Proclaimed Apr. 7, 1855.

Superior and the Chippewas of the Mississippi, that the former shall be entitled to two-thirds, and the latter to one-third, of all benefits to be derived from former treaties existing prior to the year 1847.” As such, in the 1854 ceded territory, the *Chippewa of the Mississippi* hold an undivided, half-interest in the natural resources with the Lake Superior Bands, on and off reservation like FDL, because ceding land is not the same as Chippewa surrendering rights to hunt, fish and gather. (See Mn v MLB 1999).

When the Minnesota Chippewa Tribe (MCT) was created under the Indian Reorganization Act, from the Consolidated Chippewa, Congress authorized IRA regulation and management of MCT tribal resources. After adopting the Revised Constitution, *Minnesota Chippewa Tribe Land Ordinance #3* provided for band governments “to manage, lease, permit or otherwise deal with tribal lands, interest in land or other travel assets, when authorized to do so by the tribal executive committee.”

Section 102 provides that

Each band of government shall retain the inherent authority to protect and manage the use of lands, waters and resources with respect to its reservation so as to secure the political and economic security of the band and the health and welfare of its members. Where the conditions imposed by a provision of this ordinance are in conflict with a statute, ordinance or regulation of the band government, this ordinance authorizes the band government to follow the provisions of its own law, in so far as such law is not contrary to the political and economic welfare of the band and does not directly affect any other band government without its consent.

(See The Minnesota Chippewa Tribe Land Ordinance #3, Ch. 1, Revoking all prior laws; jurisdiction, duly adopted 8-0-0 at a regular meeting October 22, 1997.)

More recently, the TEC adopted Resolution 72-17, to conduct an **Anishinabe Cumulative Impacts Assessment (ACIA)** in response to “planned oil pipelines, underground and strip mines, and large infrastructure projects” that impact lands, waters, tribal resources, cultural properties and because the protection of clean water is high on our [MCT] list of sacred responsibilities as Anishinabe people, to protect wild rice. We learned from the Nelson Act settlements that MCT lands (and waters) are held in common, and recently learned

that the MCT cannot gift the MCT lands between the 6 reservations without an Act of Congress.

We already know the real threat to our commonly held MCT tribal resources is Climate Change. White Earth and Red Lake have adopted the ACIA and No Build option, along with the 1855 Treaty Authority. White Earth and the 1855 Treaty Authority have adopted Rights of Manoomin to protect wild rice from climate change, increased greenhouse gases and other environmental impacts to lakes and waters.

We know that *Climate change affects lakes, walleye in complex ways*¹ and that years later an *Ojibwe leader says Mille Lacs walleye have not recovered yet*², We understand that any increase in tar sands extraction and production will only speed up climate change and compound environmental and aquatic problems in Minnesota; and when walleye fishing people can't fish Mille Lacs, they ultimately shift further north to Big Sandy, Pokegama, Big Winnie, Cass Lake and Leech Lake, which are all original 1855 reservations.

As such, the Line 3 agreement FDL has made with Enbridge in regards to the present water and lands permitting for this pipeline activity is the direct subject of TEC resolution 72-17, and directly affects other MCT band governments without their consent. Therefore, the FDL 401 clean water permitting and any use of MCT lands for the Line 3 project without consent of the other affected Chippewa bands and Chippewa treaty beneficiaries' as property rights holders, is unlawful, under MCT law. (See Article XIII Rights of Members).

As such, the thousands of Chippewa Treaty beneficiaries to the natural resources impacted by the Line 3 project expansion of crude oil flow respectfully request Fond du Lac cease and desist until proper consents are obtained.

Sincerely,

/s/ Frank Bibeau

Frank Bibeau
Executive Director

¹ See *Climate change affects lakes, walleye in complex ways*, by Elizabeth Dunbar on Minnesota Public Radio, Sept. 9, 2015 at <https://www.mprnews.org/story/2015/09/09/walleye-climate-change>

² See *Ojibwe leader says Mille Lacs walleye have not recovered yet* by Tony Kennedy Star Tribune OCTOBER 1, 2017 at <http://www.startribune.com/ojibwe-leader-says-mille-lacs-walleye-have-not-recovered-yet/448842053/>